
SUBSTITUTE SENATE BILL 6223

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Natural Resources, Ocean & Recreation
(originally sponsored by Senators Rockefeller, Regala, Oke, Berkey
and Spanel)

READ FIRST TIME 02/02/06.

1 AN ACT Relating to derelict or abandoned vessels; amending RCW
2 79.100.010, 79.100.040, 79.100.060, and 79.100.100; adding new sections
3 to chapter 79.100 RCW; repealing RCW 79.100.090; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 79.100 RCW
7 to read as follows:

8 A person who causes a vessel to become abandoned or derelict upon
9 aquatic lands is guilty of a misdemeanor.

10 **Sec. 2.** RCW 79.100.010 and 2002 c 286 s 2 are each amended to read
11 as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Abandoned vessel" means the vessel's owner is not known or
15 cannot be located, or if the vessel's owner is known and located but is
16 unwilling to take control of the vessel, and the vessel has been left,
17 moored, or anchored in the same area without the express consent, or
18 contrary to the rules, of the owner, manager, or lessee of the aquatic

1 lands below or on which the vessel is located for either a period of
2 more than thirty consecutive days or for more than a total of ninety
3 days in any three hundred sixty-five day period. For the purposes of
4 this subsection (1) only, "in the same area" means within a radius of
5 five miles of any location where the vessel was previously moored or
6 anchored on aquatic lands.

7 (2) "Aquatic lands" means all tidelands, shorelands, harbor areas,
8 and the beds of navigable waters, including lands owned by the state
9 and lands owned by other public or private entities.

10 (3) "Authorized public entity" includes any of the following: The
11 department of natural resources; the department of fish and wildlife;
12 the parks and recreation commission; a metropolitan park district; a
13 port district; and any city, town, or county with ownership,
14 management, or jurisdiction over the aquatic lands where an abandoned
15 or derelict vessel is located.

16 (4) "Department" means the department of natural resources.

17 (5) "Derelict vessel" means the vessel's owner is known and can be
18 located, and exerts control of a vessel that:

19 (a) Has been moored, anchored, or otherwise left in the waters of
20 the state or on public property contrary to RCW (~~79.01.760~~) 79.02.300
21 or rules adopted by an authorized public entity;

22 (b) Has been left on private property without authorization of the
23 owner; or

24 (c) Has been left for a period of seven consecutive days, and:

25 (i) Is sunk or in danger of sinking;

26 (ii) Is obstructing a waterway; or

27 (iii) Is endangering life or property.

28 (6) "Owner" means any natural person, firm, partnership,
29 corporation, association, government entity, or organization that has
30 a lawful right to possession of a vessel by purchase, exchange, gift,
31 lease, inheritance, or legal action whether or not the vessel is
32 subject to a security interest.

33 (7) "Vessel" has the same meaning as defined in RCW 53.08.310.

34 **Sec. 3.** RCW 79.100.040 and 2002 c 286 s 5 are each amended to read
35 as follows:

36 (1) Prior to exercising the authority granted in RCW 79.100.030,

1 the authorized public entity must first obtain custody of the vessel.
2 To do so, the authorized public entity must:

3 (a) Mail notice of its intent to obtain custody, at least twenty
4 days prior to taking custody, to the last known address of the previous
5 owner to register the vessel in any state or with the federal
6 government and to any lien holders or secured interests on record. A
7 notice need not be sent to the purported owner or any other person
8 whose interest in the vessel is not recorded with a state or federal
9 agency;

10 (b) Post notice of its intent clearly on the vessel for thirty days
11 and publish its intent at least once, more than ten days but less than
12 twenty days prior to taking custody, in a newspaper of general
13 circulation for the county in which the vessel is located; and

14 (c) Post notice of its intent on the department's internet web site
15 on a page specifically designated for such notices. If the authorized
16 public entity is not the department, the department must facilitate the
17 internet posting.

18 (2) All notices sent, posted, or published in accordance with this
19 section must, at a minimum, explain the intent of the authorized public
20 entity to take custody of the vessel, the rights of the authorized
21 public entity after taking custody of the vessel as provided in RCW
22 79.100.030, the procedures the owner must follow in order to avoid
23 custody being taken by the authorized public entity, the procedures the
24 owner must follow in order to reclaim possession after custody is taken
25 by the authorized public entity, and the financial liabilities that the
26 owner may incur as provided for in RCW 79.100.060.

27 (3) If a vessel is in immediate danger of sinking, breaking up, or
28 blocking navigational channels, and the owner of the vessel cannot be
29 located or is unwilling or unable to assume immediate responsibility
30 for the vessel, (~~an~~) any authorized public entity may tow, beach, or
31 otherwise take temporary possession of the vessel. Before taking
32 temporary possession of the vessel, the authorized public entity must
33 make reasonable attempts to consult with the department (~~and~~) or the
34 United States coast guard to ensure that other remedies are not
35 available. The basis for taking temporary possession of the vessel
36 must be set out in writing by the authorized public entity within seven
37 days of taking action and be submitted to the owner, if known, as soon
38 thereafter as is reasonable. If the authorized public entity has not

1 already provided the required notice, immediately after taking
2 possession of the vessel, the authorized public entity must initiate
3 the notice provisions in subsection (1) of this section. The
4 authorized public entity must complete the notice requirements of
5 subsection (1) of this section before using or disposing of the vessel
6 as authorized in RCW 79.100.050.

7 **Sec. 4.** RCW 79.100.060 and 2002 c 286 s 7 are each amended to read
8 as follows:

9 (1) The owner of an abandoned or derelict vessel is responsible for
10 reimbursing an authorized public entity for all reasonable and
11 auditable costs associated with the removal or disposal of the owner's
12 vessel under this chapter. These costs include, but are not limited
13 to, costs incurred exercising the authority granted in RCW 79.100.030,
14 all administrative costs incurred by the authorized public entity
15 during the procedure set forth in RCW 79.100.040, removal and disposal
16 costs, and costs associated with environmental damages directly or
17 indirectly caused by the vessel. An authorized public entity that has
18 taken temporary possession of a vessel may require that all reasonable
19 and auditable costs associated with the removal of the vessel be paid
20 before the vessel is released to the owner.

21 (2) Reimbursement for costs may be sought from an owner who is
22 identified subsequent to the vessel's removal and disposal.

23 (3) If the full amount of all costs due to the authorized public
24 entity under this chapter is not paid to the authorized public entity
25 within thirty days after first notifying the responsible parties of the
26 amounts owed, the authorized public entity or the department may bring
27 an action in any court of competent jurisdiction to recover the costs,
28 plus reasonable attorneys' fees and costs incurred by the authorized
29 public entity.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 79.100 RCW
31 to read as follows:

32 The owner of a vessel may request a hearing to contest an
33 authorized public entity's decision to take temporary possession or
34 custody of the vessel or to contest the amount of reimbursement owed to
35 an authorized public entity:

1 (1)(a) A written request for a hearing related to such a decision
2 or action by a state agency must be filed with the aquatic resources
3 division of the department within twenty days of the date the
4 authorized public entity acquires custody of the vessel under RCW
5 79.100.040, or if the vessel is redeemed before the authorized public
6 entity acquires custody, the date of redemption, or the right to a
7 hearing is deemed waived and the vessel's owner is liable for any costs
8 owed the authorized public entity. In the event of litigation, the
9 prevailing party is entitled to reasonable attorneys' fees and costs.

10 (b) Upon receipt of a timely hearing request, the department shall
11 proceed to hear and determine the validity of the decision to take the
12 vessel into temporary possession or custody and the reasonableness of
13 any towing, storage, or other charges permitted under this chapter.
14 Within five business days after the request for a hearing is filed, the
15 department shall notify the vessel owner requesting the hearing and the
16 authorized public entity of the date, time, and location for the
17 hearing. Unless the vessel is redeemed before the request for hearing
18 is filed, the department shall set the hearing on a date that is within
19 ten business days of the filing of the request for hearing. If the
20 vessel is redeemed before the request for a hearing is filed, the
21 department shall set the hearing on a date that is within sixty days of
22 the filing of the request for hearing.

23 (2) A request for a hearing related to such a decision or action by
24 a metropolitan park district, port district, city, town, or county must
25 be submitted using the procedures established in RCW 53.08.320(5).

26 **Sec. 6.** RCW 79.100.100 and 2002 c 286 s 11 are each amended to
27 read as follows:

28 (1) The derelict vessel removal account is created in the state
29 treasury. All receipts from RCW 79.100.050 and 79.100.060 and those
30 moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into
31 the account. The account is authorized to receive gifts, grants, and
32 endowments from public or private sources as may be made from time to
33 time, in trust or otherwise, for the use and benefit of the purposes of
34 this chapter and expend the same or any income according to the terms
35 of the gifts, grants, or endowments provided those terms do not
36 conflict with any provisions of this section or any guidelines
37 developed to prioritize reimbursement of removal projects associated

1 with this chapter. Moneys in the account may only be spent after
2 appropriation. Expenditures from the account shall be used by the
3 department to reimburse authorized public entities for ~~((seventy-five))~~
4 up to ninety percent of the total reasonable and auditable
5 administrative, removal, disposal, and environmental damage costs of
6 abandoned or derelict vessels when the previous owner is either unknown
7 after a reasonable search effort or insolvent. ~~((During the 2001-2003~~
8 ~~biennium, up to forty percent of the expenditures from the account may~~
9 ~~be used for administrative expenses of the department of licensing and~~
10 ~~department of natural resources in implementing this chapter.))~~ Costs
11 associated with removal and disposal of an abandoned or derelict vessel
12 under the authority granted in RCW 53.08.320 also qualify for
13 reimbursement from the derelict vessel removal account. In each
14 ~~((subsequent))~~ biennium, up to twenty percent of the expenditures from
15 the account may be used for administrative expenses of the department
16 of licensing and department of natural resources in implementing this
17 chapter.

18 (2) If the balance of the account reaches one million dollars as of
19 March 1st of any year, the department must notify the department of
20 licensing and the collection of any fees associated with this account
21 must be suspended for the following fiscal year.

22 (3) Priority for use of this account is for the removal of derelict
23 and abandoned vessels that are in danger of sinking, breaking up, or
24 blocking navigation channels, or that present environmental risks such
25 as leaking fuel or other hazardous substances. The department must
26 develop criteria, in the form of informal guidelines, to prioritize
27 removal projects associated with this chapter, but may not consider
28 whether the applicant is a state or local entity when prioritizing.
29 The guidelines must also include guidance to the authorized public
30 entities as to what removal activities and associated costs are
31 reasonable and eligible for reimbursement.

32 (4) The department must keep all authorized public entities
33 apprized of the balance of the derelict vessel removal account and the
34 funds available for reimbursement. The guidelines developed by the
35 department must also be made available to the other authorized public
36 entities. This subsection (4) must be satisfied by utilizing the least
37 costly method, including maintaining the information on the
38 department's internet web site, or any other cost-effective method.

1 (5) An authorized public entity may contribute its (~~twenty-five~~)
2 ten percent of costs that are not eligible for reimbursement by using
3 in-kind services, including the use of existing staff, equipment, and
4 volunteers.

5 (6) This chapter does not guarantee reimbursement for an authorized
6 public entity. Authorized public entities seeking certainty in
7 reimbursement prior to taking action under this chapter may first
8 notify the department of their proposed action and the estimated total
9 costs. Upon notification by an authorized public entity, the
10 department must make the authorized public entity aware of the status
11 of the fund and the likelihood of reimbursement being available. The
12 department may offer technical assistance and assure reimbursement for
13 up to two years following the removal action if an assurance is
14 appropriate given the balance of the fund and the details of the
15 proposed action.

16 NEW SECTION. Sec. 7. RCW 79.100.090 (Contest
17 custody/reimbursement--Lawsuit) and 2002 c 286 s 10 are each repealed.

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